

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION**

This document relates to:

*The County of Summit, Ohio, et al. v.
Purdue Pharma L.P., et al.*
Case No. 18-op-45090

*The County of Cuyahoga v.
Purdue Pharma L.P., et al.*
Case No. 1:18-op-45004

MDL No. 2804

Hon. Judge Dan A. Polster

**DEFENDANTS' OBJECTIONS TO PLAINTIFFS' SUBMISSION REGARDING THE
COURT'S PROPOSED PRELIMINARY JURY CHARGE**

Pursuant to the Court's October 17, 2019 e-mail, Defendants submit these objections to Plaintiffs' proposed changes to the Court's Proposed Preliminary Charge (attached as Ex. A).

Count One – Absolute Public Nuisance

Plaintiffs proposed two changes to the first sentence of the Court's Proposed Preliminary Charge on public nuisance: (1) to add "absolute" to modify "public nuisance" and (2) to add "or unlawful" after "intentional." The Court accepted Plaintiffs' first change and rejected their second. Defendants agree with the Court's rulings. For the avoidance of doubt, Defendants object to Plaintiffs' proposed inclusion of "or unlawful" in the nuisance charge.

Counts Three and Four -- Federal and Ohio RICO

Plaintiffs propose the following addition:

Under RICO, the Defendants' racketeering activity must have directly and proximately injured Plaintiff's business or property. Under Ohio RICO, the Defendants' racketeering activities only need to have proximately injured the Plaintiff, and Plaintiff's injury need not have been to its business or property.

While Defendants agree with Plaintiffs that causation is an element of Plaintiffs' claims—and thus an important concept to introduce and explain to the jury in the preliminary charge—Defendants

object to this proposed addition insofar as it suggests that the standards for proving causation differ between the federal and Ohio RICO claims. As explained in Defendants' proposed changes to the Court's preliminary charge, the same causation standard applies to each of Plaintiffs' claims. The Court also has recognized that the elements, including causation, for federal and Ohio RICO claims are the same. Dkt. 2580, at 1 n.1.

To the extent that the Court is inclined to accept Plaintiffs' proposed insertion, Defendants respectfully suggest that the phrase "and directly" be added to the sentence addressing Ohio RICO, or (2) if the Court adopts Defendants' proposed proximate causation instruction, delete the phrase "and directly" from the sentence addressing federal RICO.

October 18, 2019

Respectfully submitted,

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